IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6890 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANJAYKUMAR JANAKBHAI PATEL

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 6890 of 2003
MS MAMTA R VYAS for Petitioner No. 1
***** for Respondent No. 1-2

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 23/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

Rule.

Heard learned counsel Ms. Mamta Vyas for the petitioner. The petitioner - original applicant has challenged in this petition the impugned judgment and order dated 8/8/2002 passed by the learned Central Administrative Tribunal (for short 'the learned Tribunal') dismissing his Original Application No. 32 of 2002 challenging his termination order dated 3/1/2002 passed by the respondnet - authority.

2. In the instant case SSRMS, Vadodara directed SRO Godhra to fill up the post of EDMM, SRO, Godhra. Coincidentally Mr. J.N. Patel, father of the petitioner, who was SRO, Godhra, asked Employment Exchange to sponsore the names of skilled candidates in Electrician Trade with qualification of having S.S.C. passed. In response to the same, the Employment Exchange forwarded names of suitable candidates from OBC category having passed S.S.C. examination. Instead of giving wide publicity and circulating notification Mr. J.N. Patel, father of the petitioner, circulated the notification within the area of SRO, Godhra unit and gave time limit of only 7 days for applying for the said post.

Mr. Gulabhai Vahalsinh, whose name was sponsored by the Employment Exchange made a complaint to the higher authority i.e. SRO, RMS, 'W' Div ision Godhra - present respondent no. 2 that SRO Mr. J.N. Patel - father of the present petitioner has not considered his name on the ground that there was a ban on recruitment. Thereupon, the respondent no. 2 called for the appointment file and reviewed the appointment of the petitioner. On reviewing the file, he found that SRO Mr. J.N. Patel appointed none else but his son on the post of EDMM, SRO, Godhra and that too in a most suspicious and dishonest manner. He also noticed that though the Employment Exchange supplied list of candidates of OBC with qualification of having passed S.S.C., no name of his son was sponsored, therefore, SRO Mr. Patel returned the list on the ground that the post of EDMM was a labour category where the employee has to convey the bags either on his head or through handcart and the suitable person on the post was not available. He also found that one Mr. R.A. Baria, another candidate sponsored by the Employment Exchange, who had also applied for the said post, having 64.72% marks in S.S.C. and still his candidature was rejected by the SRO, Godhra on the ground that on the date of receipt of application he had not supplied OBC

certificate though he belonged to OBC category. Similarly Mr. Gulabhai Baria had also 67% marks in S.S.C. examination but he was also not considered. By ignoring all the eligible and better candidates, SRO Mr. Patel, father of the present petitioner appointed his son - the present petitioner by an order dated 20/10/2000. While making such appointment SRO Mr. Patel also fabricated the documents.

3. It was submitted by the learned counsel for the petitioner that the petitioner was selected by SRO Nadiad and SRO Godhra issued appointment order dated 20/10/200. Therefore, his service ought not to have been terminated by his higher authority i.e. SSRMS, Vadodara. The same is in violation of principles of natural justice. If it was a normal case, then this submission would have been accepted and the order of termination would have been quashed and set aside. However, from the impugned judgment and order passed by the learned Tribunal, it appears that the petitioner - original applicant is a son of Mr. J.N. Patel, SRO Godhra, who appointed him as EDMM, SRO. Thus, father appointed his son by committing serious irregularity and illegality. Therefore, in such circumstances, the order of the appellate authority exercising its jurisdiction dismissing the petitioner applicant from service cannot be interferred with.

4. Under the circumstances, the contention raised by learned counsel for the petitioner that the appellate or higher authority should not have terminated the services of the petitioner cannot be accepted in this case. In such type of cases doctrine of necessity would apply and when the services of the petitioner were terminated after due inquiry by the higher authority and when the learned Tribunal also refused to exercise discretion in favour of the petitioner, then certainly this Court would not like to exercise its supervisory jurisdiction under Article 227 of the Constitution in favour of such dishonest persons. Scope of petition under Article 227 of the Constitution is very narrow and limited as held by the Hon'ble Supreme Court in the case of Mohd. Yunus vs. Mohd. Mustaqin reported in AIR 1984 S.C. p.38, wherein the Hon'ble Supreme Court held as under :-

> "A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Art. 227. The supervisory jurisdiction conferred on the High Courts under Art. 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority",

> and not to correct an error apparent on the face of the record, much less an error of law. In exercising the supervisory power under Art. 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision."

5. In view of the above discussion, we do not find any substance or merits in this petition. Accordingly it fails and is hereby summarily dismissed. Rule discharged.

[B.J. SHETHNA, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.